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Error to Circuit Court, Russell County.

Action by Fullen Ray against the Clinchfield Coal Corporation. Judgment for plaintiff, and defendant brings error. Affirmed.

E. M. Fulton, of Wise, *Burns & Kidd*, of Lebanon, and *Morison, Morison & Robertson*, of Big Stone Gap, for plaintiff in error.

Werth & Werth, of Norton, for defendant in error.

SHANKLE *v.* SPAHR.

Sept. 20, 1917.

[93 S. E. 605.]

1. Gifts (§ 53*)—Causa Mortis—Rules in General.—The rules of law on the subject of gifts causa mortis should not be relaxed or extended.

[Ed. Note.—For other cases, see 6 Va.-W. Va. Enc. Dig. 729.]

2. Gifts (§ 16*)—Causa Mortis—Inter Vivos—Execution.—Only executed parol gifts, whether inter vivos or causa mortis, are valid.

[Ed. Note.—For other cases, see 6 Va.-W. Va. Enc. Dig. 730.]

3. Gifts (§ 61, 62 (3)*)—Causa Mortis—Necessity of Delivery.—Delivery of possession of the subject of the gift by the donor in his lifetime is essential to the execution of a gift causa mortis.

[Ed. Note.—For other cases, see 6 Va.-W. Va. Enc. Dig. 732.]

4. Gifts (§ 62 (1)*)—Causa Mortis—Necessity of Delivery.—The subject of the alleged gift, being gold coin not too ponderous for immediate delivery, delivery could not be dispensed with.

[Ed. Note.—For other cases, see 6 Va.-W. Va. Enc. Dig. 732.]

5. Gifts (§ 622 (6)*)—Causa Mortis—Constructive Delivery.—To constitute constructive delivery, it is essential that there should be a physical delivery of some tangible object which may serve as the means of getting possession and enjoyment of the subject of the gift.

[Ed. Note.—For other cases, see 6 Va.-W. Va. Enc. Dig. 733.]

6. Wills (§ 90*)—Gift Causa Mortis Distinguished.—If the words of gift accompanying the delivery indicate an intention on the part of the donor not to confer on the donee the power to take physical possession of the thing until the donor's death then the proceeding is an abortive testamentary act and not a gift.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 709.]

7. Gifts (§ 82 (1)*)—Causa Mortis—Delivery—Evidence.—Acquiescence of a donor after words of donation in a previously acquired

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

possession of the donee is insufficient evidence from which to imply delivery in cases of gifts causa mortis.

[Ed. Note.—For other cases, see 6 Va.-W. Va. Enc. Dig. 734.]

Error to Circuit Court, Washington County.

Action by W. K. Shankle, executor, against Ritta F. Spahr. Judgment for defendant, and plaintiff brings error. Reversed, and new trial granted.

S. V. Fulkerson and *N. P. Oglesby*, both of Bristol, for plaintiff in error.

Jno. W. Price, of Bristol, for defendant in error.

PETERS *v.* PETERS.

Sept. 20, 1917.

[93 S. E. 622.]

Equity (§ 368*)—Reinstatement of Cause.—The decree in a suit regarding land retired the cause from the docket with leave to either party to reinstate on notice to the adverse party. Twenty-one years thereafter one not a party to the original suit gave notice of application for reinstatement to the original defendants and another not a party, and asked for a writ of possession. Without other allegation or evidence, the court awarded writ of possession. Held, that the court had no jurisdiction over the land, the one seeking to reinstate or the new defendant, and its decree was void, since, whatever the effect of the leave given to either party to the original suit to reinstate it, the privilege to reinstate could be exercised only within a reasonable time and by one of the parties.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 712; 4 Va.-W. Va. Enc. Dig. 708.]

Appeal from Circuit Court, Scott County.

Suit by C. C. Peters against D. C. Flanary and others, which, after decree for complainant, was reinstated by Martha A. Peters, survivor, etc., against the original defendants and John M. Peters. From a decree for Martha A. Peters, John M. Peters appeals. Reversed, with direction to dismiss the proceeding.

W. S. Cox, of Gate City, for appellant.

H. C. L. Richmond, of Gate City, for appellee.

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.